Supreme Court of the United States

No. 911

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Immigration and Nationality Act of 1952, 66 Stat. 212, as amended:

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No.

BRUNO BLAZINA,

Petitioner,

vs.

E. P. BOUCHARD, District Director of Immigration and Naturalization Service, New Jersey,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, entered in the above entitled case on February 2nd, 1961.

Citations to Opinions Below

The opinion of the United States Court of Appeals for the Third Circuit is unreported and is printed in Appendix B hereto, *infra*. The opinion of the District Court is likewise printed in Appendix B hereto, *infra*.

Jurisdiction

The judgment of the Circuit Court of Appeals was filed on February 2nd, 1961. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1) and Supreme Court Rule 19-1 (b).

Question Presented

The statutory provision involved is 8 U. S. C. A. 1253 (h). It is printed in Appendix A hereto, *infra*.

Statement

Briefly, the facts are these. The petitioner, Bruno Blazina, a 22 year-old Yugoslav national, entered the United States in August, 1957 as a non-immigrant seaman pursuant to Section 1282, Title 8, U. S. C. A. providing for conditional permits to land for a period not exceeding 29 days. On December 19, 1957, Blazina having remained in the United States for a longer period than authorized, the Immigration and Naturalization Service ordered him to appear on December 26, 1957 and show cause why he should not be deported. At this time Blazina was found deportable and was granted the right of voluntary departure subject to an alternative order that he was to be deported if he failed to depart within a specified time. Blazina did not leave the United States and the order of deportation became effective.

On January 27, 1958 Blazina applied to the Attorney General for a stay of deportation pursuant to Section 243 (h) of the Immigration and Nationality Act of 1952, 66 Stat. 212, as amended, 8 U. S. C. A. 1253 (h), asserting that if returned to Yugoslavia he would be "persecuted and prosecuted" because of his Roman Catholic faith, his belief in capitalism and in a democratic form of government, and his open disavowal of communistic ideology.

On November 26, 1958, a hearing in which Blazina was represented by counsel of his own choice was had on this application before a Special Inquiry Officer. At this hearing Blazina did contend that he would be subject to physical persecution if deported to Yugoslavia. In substance, he asserted three reasons why the Attorney General should

conclude that the Yugoslavian authorities would persecute him physically on his return. First, Blazina called attention to the fact of the communist government's general hostility toward religious beliefs and practice, and alleged that he was a practicing Roman Catholic who in good faith follows the tenets and precepts of his religion. When queried as to the precise sanctions he would be subjected to, Blazina testified that "[O]ne that works has complications" and that "those that go to church and worship over there are looked down upon." Second, he asserted that if deported he would "be jailed for about three months and then later on it would be very difficult * * * to acquire a position." When asked "Upon what basis would your imprisonment and further difficulty emanate from?", he replied, "Because I fled from Yugoslavia, and those who do that are punished." The record is sparse on this point but the most reasonable inference would seem to be that the three month prison term referred to would be punishment for desertion of his vessel. Third, Blazina testified to the effect that his very act of defecting, coupled with the anti-communist statements that he had made while in this country would in themselves cause his physical persecution on his return to Yugoslavia.

On the basis of the testimony just summarized the Special Inquiry Officer recommended that the application be denied, concluding that Blazina had failed to establish "by reasonable and probative evidence that he would be subjected to physical persecution if returned to Yugoslavia."

The suit at bar was filed by Blazina on September 25, 1959, seeking a "permanent injunction" restraining the District Director of the Immigration and Naturalization Service of New Jersey from deporting him to Yugoslavia. The United States District Court concluded that there was no sound basis in law or in fact for the Attorney General to refuse to grant Blazina the dispensation authorized by Section 243 (h) and on February 14, 1960 granted a per-

manent injunction restraining Blazina's deportation. The appeal of the District Director followed on April 4, 1960, and the case came on for argument in this court on October 6, 1960. Between the date of the taking of the appeal and the date of the argument Blazina who had volunteered for the draft, was inducted into the Armed Forces of the United States.

Blazina has asserted in the Circuit Court and it is not denied that after volunteering for the draft, he has been inducted into the Armed Forces of the United States. This added circumstance in Blazina's situation. In view of Blazina's induction into the Armed Forces of the United States the Circuit Court ordered their mandate stayed for a period of sixty days from the day of the filing of their opinion to permit Blazina to petition for certiorari or to file a new application under Section 243 (h) based on his induction into the Armed Forces of the United States, or to allow him to do both.

Reasons for Granting the Writ

1. Clearly, the question of physical persecution of the Petitioner, in a Communist country, upon his deportation thereto is both topical and important in the present state of the international situation. In *U. S. ex rel. Chen Ping Zee v. Shaugnessy*, D. C. S. D. N. Y., 107 F. Supp. 607 Judge DIMOCK said:

> "In the present state of affairs in the world it does not seem to me that a person's testimony that he would be subject to persecution in a Communist country can be dismissed so lightly * * * *"

In the *Chen Ping Zee* case, writs of habeas corpus were sustained and the Court went on to hold that there was no reason stated by the Government that would tend to show that the relators would not be subject to persecution. There is likewise no such proof in the case at Bar.

Settlement of this question is clearly in the public interest, especially wherein the petitioner not only swore in affidavits and testimony to be against communism, but also enlisted in the United States Army and is presently serving therein. The disregard of the latter fact of service is equivalent to a denial on whim or caprice. *Dabrowski v. Holland*, 259 F. 2d 449 (3 Cir., 1958).

Arguendo, a person deserting his ship to live in another country, living there, speaking against the country from whence he left, and enlisting in the new land's armed services which are philosophically diametrically opposite, will not find the original land turning the other cheek and welcoming him back with open arms. More likely the return will be accompanied by most severe physical, religious and economic persecution.

In a country like our own the ship jumping problem is a continuous and perennial one. There is a solid line of cases staying deportation from *U. S. v. Schlotfeldt*, D. C. Ill. (1938), 26 F. Supp. 283, a Jew to Nazi Czechoslovakia; the *Chen Ping Zee* case, *supra*, six Chinamen to Communist China; *Sang Ryp Park v. Barber*, 107 F. Supp. 605, a Korean to Korea; *Ex rel. Watts v. Shaughnessy*, U. S. D. C., S. D. N. Y., 107 F. Supp. 613, a Basque to Franco Spain; *U. S. v. Murff*, 253 F. 2d 941, a native of Yuoslavia to Communist Yugoslavia. The circumstances of the above cases have congruent counterparts in the instant case.

2. The decisions of the cases cited above show a conflict between the Circuits involved, in the Second Circuit in New York on the easterly side of the Hudson River, Judges DIMOCK, PALMIERI and CLARK speak out strongly in curtailing the actions of the Immigration and Naturalization Service, while on the westerly side of the Hudson River in New Jersey, the Third Circuit, just as often dissolve Orders staying deportations.